THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 19160 OF 1997

Date: 22.03.2007

Between:

Karre Basava Raju.

... Petitioner

and

The Depot Manager, APSRTC, Tiruvur Depot and two others.

...

Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 19160 OF 1997

ORDER:

The award of the labour Court, Guntur in I.D. No. 372 of 1994 dated 19.12.1996 is questioned in this writ petition.

Facts in brief, as noted in the award, are that the petitioner joined the respondent Corporation as a driver on 04.04.1975. He was issued a charge sheet on 19.08.1993 alleging that he had driven the vehicle negligently with lack of anticipation and as a result the vehicle had dashed against a tanker causing the death of the helper and injuries to the cleaner and a passenger on 02.08.1993 on the route Tiruvuru to Hyderabad. In the enquiry held it was established that the accident was caused as a result of the bus hitting the rear portion of the tanker on the left side road margin resulting in the death of Sri D.V. Naidu, Helper Tiruvuru depot and causing injuries to the cleaner (fracture of the left leg) and a passenger. Pursuant to the enquiry, the petitioner was imposed the punishment of removal from service. Aggrieved thereby the petitioner approached the labour Court, Guntur.

The labour Court held that the skid marks of both the vehicles established that the tanker was in a stationery condition and the petitioner had dashed against the said tanker with the bus as a result of which the tanker went off the road. The labour Court observed that the petitioner was duty bound to drive the vehicle carefully with anticipation and by controlling the speed of his vehicle and since he did not take care the accident had occurred which resulted in the death of the helper and injuries to many. With regards the petitioner's contention that the breaks were in a weak condition the labour Court held that it was his responsibility

to get the breaks checked up before taking the vehicle. The labour Court observed that the petitioner's acquittal in the criminal case was not on merits but because of non-prosecution by the police and non-production of prosecution witnesses. The labour Court held that the enquiry officer had discussed the evidence on record and also the evidence with regards the skid marks which clearly established that the petitioner herein was negligent and rash in driving the vehicle without anticipation. The labour Court held that there was contributory negligence on the part of the tanker driver who had either stopped the vehicle on the road or was proceeding in front negligently without giving way to the bus driven by the petitioner. On the ground that there was some contributory negligence on the part of the tanker driver, the labour Court held that the punishment of removal was disproportionate. Taking into consideration the long service of the petitioner, and other circumstances, the labour Court held that the order of removal was not justified. The labour Court directed reinstatement of the petitioner without backwages with continuity of service by imposing the punishment of two annual increments with cumulative effect.

Sri M. Pandurangarao, learned Counsel for the petitioner, would submit that in the Motor Accident Claim case respondents 1 and 2 had taken the plea that there was no negligence on the part of the driver and that the Corporation was not liable to pay compensation. Learned Counsel would contend that since the respondents had, on their own volition, taken such a stand it must necessarily be held that the petitioner had not driven the bus

negligently and that he was not responsible for the death of the helper or injuries to others. Learned Counsel would further contend that, in any event, denial of back wages coupled with imposition of punishment of withholding of two increments with cumulative effect had caused a heavy financial burden on the petitioner and that the punishment imposed was grossly disproportionate to the charge held established.

It is well to remember that in certiorari proceedings this Court does not sit in appeal over findings of fact recorded by Tribunals/Labour Courts nor would it substitute its views, on the quantum and nature of punishment, for the one imposed either by the employer or the punishment as substituted by the labour Court. It is only when the punishment, as substituted by the labour Court, is one which shocks its conscience or is one which could not have been imposed at all would this Court interfere. It must also not be lost sight of that in certiorari proceedings this Court is only concerned with the order of the Tribunal impugned before it and not matters extraneous thereto. It is only the validity of the award in I.D. No. 372 of 1994 dated 19.12.1996 which arises for consideration and no notice can be taken of the contention that a contrary plea had been taken by the respondents before the Motor Accident Claims Tribuna, more so when no evidence in this regard was adduced before the labour Court.

With regards the quantum of punishment it must be noted that the charges held established is of negligent driving causing the death of the helper and of causing injuries to a few others. The punishment of removal from service, imposed by the employer

pursuant to a departmental enquiry, has been substituted by the labour Court to one of withholding of two increments with cumulative effect and denial of back wages. The punishment, as substituted by the labour Court, cannot be said to be one which shocks the conscience of this Court or as a punishment which could not have been imposed at all. Under Section 11-A of the Industrial Disputes Act the labour Court has been conferred the power to examine the nature and extent of punishment imposed on a delinquent employee by his employer and, if the circumstances so warrant, to substitute the punishment imposed. In the facts and circumstances of the present case it cannot be said that the discretion exercised by the labour Court, under Section 11-A of the Industrial Disputes Act, to interfere with the quantum of punishment necessitates interference in certiorari proceedings under Article 226 of the Constitution of India. The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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Date: 22.03.2007 RAMESH RANGANATHAN, J

MRKR